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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,923	09/22/2003	Lee M. Amaitis	069547.0161	1611
5073	7590	08/02/2005		
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER JONES, SCOTT E	
			ART UNIT 3713	PAPER NUMBER

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/667,923	AMAITIS ET AL.
	Examiner	Art Unit
	Scott E. Jones	3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-52 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 September 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/19/04, 5/26/04</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input checked="" type="checkbox"/> Other: <u>IDS:1/20/04, 1/20/04</u> |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 6-7, 9-17, 19-20, and 22-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Downes (U.S. Pub. No. 2003/0199315).

Downes discloses a pari-mutuel sports wagering system that involves pari-mutuel wagering on the performance statistics of sports teams, individual sports players, athletes, or groups of players. Downes discloses a pari-mutuel sports wagering system where a player may place wagers based on a player's statistical rank compared to players of the same position over a single game, week, month, pre-season, quarter season, half season, or full season. Downes system is equally compatible with other sports and events, such as, golf, tennis, soccer, racing, etc. Downes discloses a system and method directed to:

Regarding Claims 1 and 17:

- receiving one or more first type of bets, each first type having an associated bet amount and comprising a bet that the total number of units earned by a particular participant over a course of a plurality of events will fall within a first range of numbers, the particular participant selected from a plurality of participants each participating in at least one of the plurality of events (Paragraphs 74-75, 82-95, 204-

- 253); The first bet may be associated with quarterbacks in football that earn a number of units based upon number of completed passes in a season.
- receiving one or more second type of bets, each second type of bet having an associated bet amount and comprising a second bet that the total number of units earned by the particular participant in the plurality of events will fall within a second range of numbers (Paragraphs 74-75, 82-95, 204-253); The second bet may be associated with linebackers in football that earn a number of units based upon the number of quarterback sacks in a season.
 - determining the total number of units earned by the particular participant based at least in part on the positioning of the particular participant in each of the plurality of events (Paragraphs 74-75, 82-95, 204-253); The positioning may be the rank of the quarterbacks/linebackers over the season.
 - determining whether the first type of bets or the second type of bets are winning bets based at least in part on whether the total number of units earned by the particular participant falls within the first range of numbers or the second range of numbers (Paragraphs 74-75, 82-95, 204-253); Determining whether the bets are winning bets may be based upon the quarterback/linebackers that earn the most units over the season. So each of the position players with the highest rank within a particular position with the most units earned at the end of the season would be winning bets.
 - determining a betting pool based at least in part on the total of the bet amounts associated with the first type of bets and the total of the bet amounts associated with the second type of bets (Paragraphs 74-75, 82-95, 204-253); and

- determining an amount of a payout based at least in part on the betting pool and the total of the bet amounts associated with the winning bets (Paragraphs 74-75, 82-95, 204-253).

Regarding Claim 2:

- wherein the number of units earned by the particular participant comprises the amount of money earned by the particular participant during the course of the plurality of events (Paragraphs 74-75, 82-95, 204-253). This would be applicable to the highest money winners such as in the PGA golf championship and USTA tennis etc.

Regarding Claim 3:

- wherein the plurality of events comprises a plurality of horse races and the plurality of participants comprises a plurality of jockeys (Paragraphs 74-75, 82-95, 204-253).

Regarding Claim 4:

- wherein the plurality of events comprises a plurality of races and the plurality of participants comprises a plurality of drivers (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 6 and 19:

- receiving one or more third type of bets, each third type of bet having an associated bet amount and comprising a third bet that the total number of units earned by the particular participant in the plurality of events will fall within a third range of numbers (Paragraphs 74-75, 82-95, 204-253); The third bet may be associated with running backs in football that earn a number of units based upon the number of yards gained rushing in a season.

- determining the betting pool based at least on the total of the bet amounts associated with the first type of bets, the second type of bets and the third type of bets (Paragraphs 74-75, 82-95, 204-253); and
- determining whether the first type of bets, the second type of bets, or the third type of bets are winning bets based at least on whether the total number of units earned by the particular participant falls within the first range of numbers, the second range of numbers, or the third range of numbers (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 7 and 20:

- receiving one or more fourth type of bets, each fourth type of bet having an associated bet amount and comprising a fourth bet that the total number of units earned by the particular participant in the plurality of events will fall within a fourth range of numbers (Paragraphs 74-75, 82-95, 204-253); The fourth bet may be associated with defensive backs in football that earn a number of units based upon the number of interceptions in a season.
- determining the betting pool based at least on the total of the bet amounts associated with the first type of bets, the second type of bets, the third type of bets, and the fourth type of bets (Paragraphs 74-75, 82-95, 204-253); and
- determining whether the first type of bets, the second type of bets, the third type of bets, or the fourth type of bets are winning bets based at least on whether the total number of units earned by the particular participant falls within the first range of numbers, the second range of numbers, the third range of numbers, or the fourth range of numbers (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 9 and 22:

- determining the positioning of the particular participant in that event (Paragraphs 74-75, 82-95, 204-253); and
- determining a number of units earned by the particular participant based at least on the positioning of the particular participant in that event (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 10 and 23:

- determining the positioning of the particular participant in the event (Paragraphs 74-75, 82-95, 204-253); and
- determining a number of units earned by the particular participant based at least on the positioning of the particular participant in the event and a unit distribution structure defining a distribution of units over a plurality of positions in the event (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 11 and 24:

- wherein the unit distribution structure comprises a purse distribution structure defining a distribution of a purse over a plurality of positions in the event (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 12 and 25:

- after one or more of the plurality of events has occurred, receiving a third type of bet having an associated bet amount and comprising a bet regarding the total number of units earned by the particular participant in the plurality of events excluding the one or more events that have occurred (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 13 and 26:

- wherein the third type of bet locks in a particular gain or loss associated with one of the first type of bets (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 14 and 27:

- after one or more of the plurality of events has occurred, for a particular one of the first type of bets: receiving a request to settle the bet (Paragraphs 74-75, 82-95, 204-253);
- determining an amount of a settlement payment for the bet based at least in part on the positioning of the particular participant in each of the one or more events that has occurred (Paragraphs 74-75, 82-95, 204-253);
- paying out the settlement payment (Paragraphs 74-75, 82-95, 204-253); and
- canceling the particular bet (Paragraphs 74-75, 82-95, 204-253).

Regarding Claim 15:

- wherein the plurality of events occur over an extended period of time (Paragraphs 74-75, 82-95, 204-253).

Regarding Claim 16:

- wherein the plurality of events occur over a period of time greater than one week (Paragraphs 74-75, 82-95, 204-253).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 8, 18, 21, and 28-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downes (U.S. Pub. No. 2003/0199315) in view of Scarne's.

Downes discloses that as discussed above with regards to claims 1-4, 6-7, 9-17, 19-20, and 22-27.

Regarding Claims 5, 18, 28, and 42:

- determining an index number representing a predicted total number of units earned by the particular participant in the plurality of events;
- defining the first range of numbers as the range of numbers between the index number and a number less than the index number; and
- defining the second range of numbers as the range of numbers between the index number and a number greater than the index number.

Regarding Claims 8 and 21:

- determining an index number representing a predicted total number of units earned by the particular participant in the plurality of events; and
- determining the first range of numbers, the second range of numbers, and the third range of numbers based at least in part on the index number.

Scarnes, like Downes, also relates to pari-mutuel type wagering, as well as, other gambling games. Furthermore, Scarnes discloses an under and over bet used in sports betting which could be applied to Downes above (Pages 132-133). Scarnes teaches:

Regarding Claim 5, 18, 28, and 42:

- determining an index number (under and over number) representing a predicted total number of units earned by the particular participant in the plurality of events (Pages 132-133);
- defining the first range of numbers as the range of numbers between the index number and a number less than the index number (The number may be associated with quarterbacks in football that earn a number of units based upon number of completed passes in a season.) (Pages 132-133); and
- defining the second range of numbers as the range of numbers between the index number and a number greater than the index number (The second number may be associated with linebackers in football that earn a number of units based upon the number of quarterback sacks in a season.) (Pages 132-133).

Regarding Claims 8 and 21:

- determining an index number representing a predicted total number of units earned by the particular participant in the plurality of events (Pages 132-133); and
- determining the first range of numbers, the second range of numbers, and the third range of numbers based at least in part on the index number (Pages 132-133).

It would have been obvious for one having ordinary skill in the art at the time of Applicant's invention to incorporate Scarne's over and under bet in Downes. For instance, an over and under bet could be used to determine a winner of a bet based upon a quarterback throwing a certain number of touch downs above or below a predetermined number over an entire season. One would be motivated to incorporate this type of wager in Downes in order to increase the excitement and number of possible wagers available to a player in a wagering game.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-52 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. 10/667,755, claims 1-68 of copending Application No. 10/836,999, claims 1-22 of copending Application No. 10/453,761, claims 1-29 of copending Application No. 10/453,557, and claims 1-19 of copending Application No. 10/062,745. Although the conflicting claims are not identical, they are not patentably distinct from each other because each is directed to a quote versus a number of units, a value of a monetary value indicator versus a number of units, a finishing position versus a number of units, a bid amount versus a number of units, or possible outcomes versus a number of units.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Aylmer et al. '623 discloses a method and system for wagering on an individual or on a team over a round or multiple rounds.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott E. Jones whose telephone number is (571) 272-4438. The examiner can normally be reached on Monday - Friday, 8:30 A.M. - 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott E. Jones
Primary Examiner
Art Unit 3713

sej

